

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Switching in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-024
(Filed February 21, 2001)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Loops in Its First Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 01-02-035
(Filed February 28, 2001)

Application of The Telephone Connection Local Services, LLC (U 5522 C) for the Commission to Reexamine the Recurring Costs and Prices of the DS-3 Entrance Facility Without Equipment in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-031
(Filed February 28, 2002)

Application of AT&T Communications of California, Inc. (U 5002 C) and WorldCom, Inc. for the Commission to Reexamine the Recurring Costs and Prices of Unbundled Interoffice Transmission Facilities and Signaling Networks and Call-Related Databases in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of

Application 02-02-032
(Filed February 28, 2002)

D.99-11-050.

Application of Pacific Bell Telephone Company (U 1001 C) for the Commission to Reexamine the Costs and Prices of the Expanded Interconnection Service Cross-Connect Network Element in the Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-02-034
(Filed February 28, 2002)

Application of XO California, Inc. (U 5553 C) for the Commission to Reexamine the Recurring Costs of DS1 and DS3 Unbundled Network Element Loops in Its Second Annual Review of Unbundled Network Element Costs Pursuant to Ordering Paragraph 11 of D.99-11-050.

Application 02-03-002
(Filed March 1, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING MOTION FOR OFFICIAL NOTICE**

On June 1, 2004, AT&T Communications of California, Inc. (AT&T) and MCI, Inc. (MCI) (collectively "Joint Applicants") filed a motion requesting the Commission take official notice of numerous documents attached to their comments on the proposed decision mailed to the parties in this proceeding on May 3, 2004. Specifically, Joint Applicants request notice of several financial analyses prepared by entities such as Citigroup/Smith Barney, Banc of America Securities, and Morgan Stanley, as well as testimony and other documents filed in other state unbundled network element (UNE) pricing proceedings. Joint Applicants request notice of these documents because they were not available prior to the close of the record of this proceeding.

Pacific Bell Telephone Company d/b/a SBC California (SBC-CA) opposes this request and states that none of the documents meet the legal requirements for taking official notice, as set forth in Commission Rule 73. Rule 73 states that the Commission may take official notice of such matters as may be judicially noticed by the courts of the State of California. According to SBC-CA, the Commission may take notice of the existence of a document, but cannot take notice of the truth of its contents unless such contents are indisputably true and not hearsay.¹ Joint Applicants request notice of stock analyst reports which SBC-CA contends are subjective analyses, and the truth of these documents is clearly in dispute. Further, the truth of statements in documents and testimony from other state public utility commission proceedings is also a subject of dispute.

I agree with SBC-CA that it would be improper to take official notice of the documents presented by Joint Applicants because the contents of these documents are reasonably subject to dispute and cannot be accepted as facts.

¹ SBC-CA cites to Decision 02-07-043, at p. 40, which states:

We are mindful that judicial notice of the truth of the content of a court or agency file is proper only “when the existence of the record itself precludes contravention of that which is recited in it...” [citations omitted.] Judicial notice of a document’s contents is inappropriate in other instances because the truth of a document’s content is reasonably subject to dispute or constitutes hearsay. [citations omitted.] ...[T]he Commission ...can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact, conclusions of law, and judgments. [Citations omitted.]”

Therefore, **IT IS RULED** that Joint Applicants' June 1, 2004 motion requesting official notice is denied.

Dated August 12, 2004, at San Francisco, California.

/s/ DOROTHY J. DUDA

Dorothy J. Duda
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion for Official Notice on all parties of record in this proceeding or their attorneys of record.

Dated August 12, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.